UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

ROBERT McADOO
d/b/a UKIAH AMBULANCE

Employer

and

SHANENE EATON, An Individual — Case 20-RD-2381

Petitioner

and

HEALTH CARE WORKERS UNION,
LOCAL 250, SEIU, AFL-CIO

Union

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

On March 9, 2004, I issued a Decision and Order dismissing the petition filed herein on the basis that it is barred because of the automatic renewal of the contract between the Employer and the Union. The Employer timely filed a Request for Review with the Board and, on April 15, 2004, the Board issued an Order granting review and remanding the matter to the undersigned to consider the Employer's contentions raised in its request for review (i.e., that there is no contract bar because the agreement is unsigned and the Union has abandoned the administration of the contract), including reopening the record, if necessary, and to issue a supplemental decision that addresses these issues. These issues had not been raised on the record at the hearing and were not addressed in the Decision and Order issued heretofore.

In view of the foregoing, pursuant to an Order Remanding Proceeding for Further Hearing and Notice of Representation of hearing issued by the undersigned on June 2, 2004, the record was reopened and further hearing was conducted on June 16, 2004. Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. [1]

2. The record reflects that the Employer is a sole proprietorship with a place of business in Ukiah, California, where it operates an emergency medical transport business. In the twelve-month period preceding the hearing, the Employer derived gross revenue in excess of $1.4 million, $330,000 of which was derived from Federal Medicare payments for services rendered by the Employer, approximately $750,000 of which was derived from private pay patients and/or insurance companies, and the remainder of which came from Medi-Cal payments. The record also reflects that during the twelve-month period preceding the hearing, the Employer purchased and received at its Ukiah facility, ambulances valued in excess of $158,000 directly from a car dealership located

[1] Although the record reflects that all parties were properly notified of these proceedings, no representative of the Union appeared at either the hearing held on February 27, 2004, or at the remand hearing held on June 16, 2004. With regard to the notice given for the February 27, 2004, hearing, the record reflects that the Union was served with a copy of the petition and notice of hearing by first class mail on February 13, 2004. Thereafter, by Order dated February 19, 2004, which was served on all parties by first-class mail on the same date, the hearing was rescheduled from February 20, 2004 to February 27, 2004, at 10:00 a.m., at a location to be thereafter designated in Ukiah, California. On February 24 and again on February 26, 2004, all parties were notified by facsimile transmission of the location of the hearing. With regard to the hearing on remand held June 16, 2004, the record reflects that the Order Remanding Proceeding for Further Hearing and Notice of Representation Hearing issued on June 2, 2004, and was served on all parties on the same date. Thereafter, on June 9, 2004, an order rescheduling hearing to June 16, 2004, was served on all parties by first-class mail on June 9, 2004. On June 10, 2004, all parties were notified by first-class mail of a change in venue for the June 16 hearing. As the record reflects that the Union was served with notice of these proceedings, I find that the hearing officer did not commit prejudicial error by proceeding with the hearing in the absence of a representative from the Union.

in Texas. Based on such facts, I find that the Employer is engaged in commerce within the meaning of the Act.

3. With regard to the Union's status as a labor organization, the record reflects that the Employer and the Union were parties to a collective-bargaining agreement effective by its terms from March 27, 1997 to March 26, 2000 (the 1997-2000 Agreement). By its terms, the 1997-2000 Agreement covered the following unit of employees:

> All full-time and part-time Emergency Medical Technicians, Emergency Medical Technicians II's, Paramedics, Dispatchers and Office Clerical employees employed by the employer at all employer facilities; excluding all other employees, guards, and supervisors as defined in the Act as amended.

The 1997-2000 Agreement contained provisions covering wages, fringe benefits and other terms and conditions of employment for unit employees. At the time of the hearing on February 27, 2004, the unit consisted of approximately thirty employees, including twelve EMT-1s, seventeen paramedics and at least one office clerical, Petitioner Shanene Eaton, who is a medical biller. The record reflects that representatives of the Union negotiated the 1997-2000 Agreement with the Employer and that unit employees participated on the Union's bargaining committee during such negotiations. The record further reflects that the Union filed grievances with the Employer on behalf of unit employees during the term of the 1997-2000 Agreement. In addition, the record reflects that employees of the Employer have attended meetings held by the Union and paid dues to the Union.

The record further reflects that the Union bargained with the Employer over a new contract from January through May 2000. Five of the Employer's employees served on the Union's negotiating committee during these contract negotiations. A field representative from the Union visited the Employer's facility several times between 1997 and 2003, with the most recent visit occurring in November 2003, when the Union representative met with employees and obtained a seniority list from the Employer's owner, Robert McAdoo. The Employer has adhered to the terms of the 1997-2000 Agreement with the Union to date and remitted health insurance and pension payments on behalf of unit employees to the applicable carriers. In these circumstances, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

4. I find that there is no contract bar to these proceedings and that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

In the Decision and Order dismissing the petition herein, I found, based on the record evidence, which included the testimony of only one witness, Employer Owner McAdoo, that the Employer had been a party to two collective-bargaining agreements, herein referred to as the 1997-2000 Agreement and the 2000-2002 Agreement. An unsigned copy of the 2000-2002 Agreement was introduced into evidence at the first hearing in this case. At that hearing, McAdoo identified the unsigned copy of the 2000-2002 Agreement as the agreement negotiated with the Union in 2000, and testified that it had been in effect on the dates shown on its front page, which are "March 27, 2000-March 26, 2002." In his testimony, McAdoo described the 2000-2002 Agreement as

having been "signed." The 2000-2002 Agreement contains an automatic renewal provision which states that it will remain in effect from year to year after its expiration date, unless written notice of cancellation, amendment or modification is given by one party to the other at least 90 days prior to each subsequent anniversary date. At the first hearing, McAdoo testified that at no time during the term of the 2000-2002 Agreement had the Union ever given notice that it wished to terminate or renegotiate that agreement. Nor was any evidence introduced to show that the Employer had ever given the Union the written notice necessary to modify or terminate the 2000-2002 Agreement. Given the absence of any evidence that a written notice had ever been given by either party to cancel, amend or modify the 2000-2002 contract, I found that by the terms of the automatic renewal provision, the 2000-2002 Agreement had rolled over, and during the relevant period existed as a one year contract with an expiration date of March 26, 2004, and a new insulated period for the filing of petitions.[2] In these circumstances, I found that the petition herein was untimely because it had been filed on February 12, 2004, which was outside of the insulated period.

At the June 16, 2004 hearing on remand, McAdoo was again the only witness. On this occasion, however, he testified that the 2000-2002 Agreement had never been signed by the Employer. Specifically, McAdoo testified that the Union had reopened the 1997-2000 Agreement by letter from Union President Sal Roselli, dated December 13, 1999. According to McAdoo, while the parties had negotiated over the 2000-2002 Agreement, the Employer had never, in fact, executed the 2000-2002 Agreement. In this

[2] The 2000-2002 Agreement had rolled over twice, once with a new expiration date of March 26, 2003, and the second time with a new expiration date of March 26, 2004.

regard, McAdoo testified that he had never signed the 2000-2002 Agreement, had never authorized any one else to sign it on behalf of the Employer, and had never seen a copy of the 2000-2002 Agreement signed by any representative of the Union or the Employer.

McAdoo testified that he and the Employer's Labor Relations Consultant, Charlotte Pinney,[3] had held bargaining meetings with the Union during the period from January through May 2000. McAdoo received a letter from the Union dated May 26, 2000, notifying him that the Union had ratified the 2000-2002 Agreement, that it would be preparing copies of that agreement for his signature, and requesting a meeting during the week of June 12 or June 19, 2000, for that purpose. However, according to McAdoo, no copies of the 2000-2002 Agreement were thereafter forwarded to him by the Union and no meeting occurred with the Union for the purpose of executing the 2000-2002 Agreement. The Union thereafter sent unsigned copies of the draft 2000-2002 Agreement to Pinney, who provided them to McAdoo. On July 10, 2000, by facsimile transmission, Pinney sent her handwritten corrections to the 2000-2002 Agreement to Union representative Brent Harland, and also sent a copy of this facsimile to McAdoo. According to McAdoo, the Employer had never received a corrected copy of the 2000-2002 Agreement from the Union and had never executed the Agreement.[4]

McAdoo testified that his testimony given at the prior hearing, in which he referred to the 2000-2002 Agreement as having been "signed" was incorrect, and that such testimony had been based on the erroneous assumption that the corrections faxed to

[3] Pinney is employed by the California Association of Employers.

[4] The unsigned copy of the Agreement introduced into the record did not contain the corrections faxed to the Union by Pinney.

the Union by Pinney had been made by the Union and a corrected 2000-2002 Agreement had been thereafter signed by Union officials and sent to Pinney. McAdoo further testified that he did not become aware that his testimony at the February 27, 2004, hearing, that the 2000-2002 Agreement had been signed, was incorrect until after the February 27, 2004 hearing. According to McAdoo, after that hearing, he had reviewed the Employer's records and requested Pinney to review her files and records and determined that the 2000-2002 Agreement had never, in fact, been signed. At the second hearing, McAdoo testified, however, that to date, the Employer has continued to abide by the terms of the 1997-2000 Agreement. [5]

Based on McAdoo's uncontroverted testimony correcting his prior testimony regarding the Employer and the Union having signed the 2000-2002 Agreement, I find that there is no signed contract to bar the instant petition and that a question concerning representation has been raised in this proceeding. In these circumstances, it is not necessary to determine whether the Union has abandoned the administration of the 2000-2002 Agreement.[6]

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[5] In this regard, McAdoo testified that the Employer had continued to make payments into the pension and health plans as required under the 1997-2000 Agreement but had never instituted a dues check off for employees. He further testified that the Union had never negotiated any wage increases for employees and that it had never filed any grievances during the period covered by the 2000-2002 Agreement.

[6] Assuming it is necessary to decide this issue, I would find that the record evidence is insufficient to establish that the Union had abandoned the unit, given that as recently as May 2000, the Union was negotiating a new collective-bargaining agreement with the Employer; McAdoo was unaware that the 2000-2002 Agreement had never been signed until after the hearing on February 27, 2004; the Employer has been abiding by the terms of the 1997-2000 Agreement; and a Union representative visited the Employer's facility as recently as November 2003, met with employees and obtained a seniority list from McAdoo. In these circumstances, I would find that the record evidence is insufficient to support the conclusion that the Union is unwilling or unable to represent the employees in the unit, even though it failed to appear at the proceedings in this case, had not contacted the Employer since November 2003, and has been inactive in filing grievances since 2000 or in obtaining

5. As the petitioned-for unit is co-extensive with the unit covered under the parties' most recent collective-bargaining agreement, I find that the following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and part-time emergency medical technicians, emergency medical technician II's, paramedics, dispatchers and office clerical employees employed by the Employer at all Employer facilities, excluding all other employees, guards, and supervisors as defined in the Act as amended."

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit herein found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the

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execution of the 2000-2002 Agreement. See *Bay Area Sealers*, 251 NLRB 89, 113 (1980); *Pioneer Inn*, 228 NLRB 1263, 1264 (1977).

commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by HEALTH CARE WORKERS UNION, LOCAL 250, SEIU, AFL-CIO.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director of Region 20 who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Region 20 Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before July 22, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570.

This request must be received by the Board in Washington by July 29, 2004.

DATED at San Francisco, California, this 15th day of July, 2004.

/s/ Robert H. Miller
Robert H. Miller, Regional Director
National Labor Relations Board
Region 20
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San Francisco, CA 94103-1735